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No. 522

In The

Supreme Court of the United States

OCTOBER TERM, 1964

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *et al*,
Petitioners,

v.

AAXICO AIRLINES, INC.
Respondent.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioners file this petition for rehearing of their petition for certiorari for the reason that since the Court's denial of certiorari herein (December 7, 1964) its decision was handed down in *Fibreboard Paper Products Corp. v. NLRB*, ___ U.S. ___ [57 LRRM 2609], December 14, 1964. Said decision is an intervening circumstance of substantial or controlling effect.

In *Fibreboard*, the Court sustained a finding of a refusal to bargain under the National Labor Relations Act based upon the contracting out of work of the bargaining unit. As noted by the Concurring Opinion, the case involved "the substitution of one

group of workers for another to perform the same task in the same plant under the ultimate control of the same employer."

In the instant case, Aaxico substituted a group of pilots on the payroll of two pilot supply companies (ASCO and IASCO) for its own pilots who were on layoff status to perform the task of flying Aaxico aircraft under the control of the Aaxico chief pilot. As was true in *Fibreboard*, "No capital investment was contemplated; the company merely replaced existing employees with those of an independent contractor to do the same work under similar conditions of employment."

The *Fibreboard* case arose under the NLRA, whereas the instant case arose under the Railway Labor Act. The Court held that the subject matter in *Fibreboard* "is well within the literal meaning of of the phrase 'terms and conditions of employment,'" citing Order of *Railroad Telegraphers v. Chicago and N.W.R. Co.*, 362 U.S. 330, which was decided under the Railway Labor Act.

It thus follows that unilateral contracting out of bargaining unit work by an employer subject to the Railway Labor Act should also be deemed a refusal to bargain, or, in Railway Labor Act parlance, a violation of the status quo provisions of Section 2, Seventh and Section 6 of the RLA. The District Court in the instant case made such a holding and

sought to restore the status quo and require bargaining with the cirtified union. The District Court injunction was a remedial order similar to that which the NLRB entered in the *Fibreboard* case, except that certain contractual and damage issues were reserved for determination by a system board of adjustment.

Granting of certiorari herein will establish the availability of an effective remedy under the Railway Labor Act "restoring the *status quo ante* to insure meaningful bargaining . . .," similar to the remedy which the NLRB deemed effective in *Fibreboard*. Granting of certiorari will thus insure a continued uniformity of interpretation as to the duty to bargain and the availability of comparable remedy under both the Railway Labor Act and the National Labor Relations Act. Failure to review will result in the disparity which this Court has sought to avoid. *Steele v. Louisville & N. R. Co.*, 323 U.S. 192, 200.

The system board of adjustment has no authority to remedy violations of the statute, therefore, the jurisdiction of the District Court to fill this hiatus by its injunctive remedy should be confirmed with the granting of certiorari herein.

WHEREFORE, PREMISES CONSIDERED, petitioners respectfully pray that rehearing be

granted and writ of certiorari issue accordingly.

Respectfully submitted,

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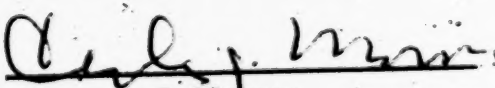
December 22, 1964

CERTIFICATE OF COUNSEL

This is to certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and said Petition is restricted to calling the Court's attention to an intervening circumstance of substantial or controlling effect.

December 22, 1964



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